

***California Department of Consumer Affairs***

***Legal Guide LT-3***

**RENTAL HOUSING & REPAIRS:  
WHO'S RESPONSIBLE FOR WHAT & HOW TO GET REPAIRS MADE**

***October 1994***

A rental unit must be fit to live in; that is, it must be "habitable." California laws make landlords and tenants each responsible for certain kinds of repairs, although landlords ultimately are held responsible for assuring that a rental unit is habitable.

### **What kinds of repairs must a landlord make?**

Landlords must repair problems which make a rental unit unfit to live in, or "uninhabitable." Before renting a unit, a landlord must make the rental unit fit to live in, or "habitable." Additionally, while the unit is being rented, the landlord must do maintenance work and make repairs which are necessary to keep the unit liveable.<sup>1</sup> However, a landlord is not responsible for repairing damages which were caused by the tenant or the tenant's family, guests or pets.<sup>2</sup>

Under the "implied warranty of habitability," the landlord is responsible for repairing conditions that seriously affect the rental unit's habitability.<sup>3</sup> Whether the landlord or the tenant is responsible for making less serious repairs is usually determined by the rental agreement.

The law is very specific as to what kinds of conditions make a rental uninhabitable. These are discussed below.

### **What kinds of repairs must a tenant make?**

Tenants are required by law to take reasonable care of their rental units and common areas, such as hallways and outside areas. That means that a tenant must act to keep those areas in good condition. Tenants also must repair all damages which result from their neglect or abuse, and must repair damages caused by anyone for whom they are responsible, such as family, guests or pets.<sup>4</sup>

### **What kinds of conditions make a rental unit legally uninhabitable?**

There are many kinds of repair problems which could make a rental unit unlivable. The implied warranty of habitability requires landlords to maintain their rentals in a condition fit for the "occupation of human beings."<sup>5</sup> In addition, the rental unit must "substantially comply" with building and housing code standards that materially affect tenants' health and safety.<sup>6</sup>

A dwelling may be considered uninhabitable if it substantially lacks any of the following:<sup>7</sup>

- Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
- Plumbing facilities in good working order, including hot and cold running water, connected to a sewage disposal system.

- Gas facilities in good working order.
- Heating facilities in good working order.
- An electric system, including lighting, wiring and equipment, which is in good working order.
- Clean and sanitary buildings, grounds and appurtenances (for example, a garden or a detached garage) which are free from debris, filth, rubbish, garbage, rodents and vermin.
- Adequate trash receptacles in good repair.
- Floors, stairways and railings in good repair.

In addition to these requirements, each rental unit must have all of the following:

- A working toilet, wash basin, and bathtub or shower; the toilet and bathtub or shower must be in a room which is ventilated and allows for privacy.
- A kitchen with a sink, which cannot be made of an absorbent material such as wood.
- Natural lighting in every room through windows or skylights; windows in each room must be able to open at least halfway for ventilation, unless a fan provides mechanical ventilation.
- Safe fire or emergency exits leading to a street or hallway; stairs, hallways and exits must be kept litter-free; and, storage areas, garages and basements must be kept free of combustible materials.<sup>8</sup>

For example, it is the landlord's responsibility to fix a leaking roof because the implied warranty of habitability requires that the roof not leak. But the implied warranty of habitability does not require the landlord to repair damages that are caused by the tenant's family, guests or pets, or to clean up trash that is left by tenants or those for whom the tenant is responsible.<sup>9</sup>

### **Are there any limitations on the landlord's duty to keep the rental unit habitable?**

Yes. Even if one of the conditions listed above exists and makes the rental unit not livable, a landlord may not be legally required to repair the condition if the tenant has not fulfilled the tenant's own responsibilities.

In addition to generally requiring a tenant to take reasonable care of the rental unit and common grounds, the law specifically lists certain things that a tenant must do to keep the rental unit livable. If a tenant fails to do one of these things, and the tenant's failure has either substantially caused the unlivable condition to occur, or has substantially interfered with the landlord's ability to

repair the unlivable condition, the landlord has no duty to repair the condition.<sup>10</sup>

Tenants must:

- Keep the premises "as clean and sanitary as the condition of the premises permits."
- Use and operate gas, electrical and plumbing fixtures properly. (Examples of improper use include overloading electrical outlets, flushing large, foreign objects down the toilet, and allowing any gas, electrical or plumbing fixture to become filthy.)
- Dispose of trash and garbage in a clean and sanitary manner.
- Not destroy, damage, or deface the premises, or allow anyone else to do so.
- Not remove any part of the structure, dwelling unit, facilities, equipment or appurtenances, or allow anyone else to do so.
- Use the premises as a place to live, and use the rooms for their intended purposes. For example, the bedroom must be used as a bedroom and not as a kitchen.

However, a landlord may agree in writing to clean the rental unit and dispose of the trash.<sup>11</sup>

If the tenant violates these requirements, the landlord is ultimately responsible for the condition of the rental unit, and could be prosecuted for violating the building and housing codes. However, the tenant cannot withhold rent or sue the landlord if the tenant has failed to meet these requirements.<sup>12</sup>

#### **Who is responsible for other kinds of repairs, such as repairs to a refrigerator or washing machine?**

As to less serious repairs, the rental agreement may provide for either the tenant or the landlord to fix a particular item. Items covered by such an agreement -- refrigerators, washing machines, parking places or swimming pools -- are usually considered "amenities," which in their absence do not render a dwelling unit unfit for living. Such agreements are usually enforceable in accordance with the intent of the parties.

#### **Can a landlord and tenant agree that the tenant is to make all repairs, of whatever kind?**

Yes. The landlord and the tenant may agree in the rental agreement that the tenant is responsible for **all** repairs and maintenance, in exchange for a lower rent fee.<sup>13</sup> Such an agreement must be made in good faith, and should be signed by the tenant only if he or she is able to make all the necessary repairs. Ultimately, the landlord is

responsible to the city, county, or state for maintaining the property as required by state or local law.

#### **How can a tenant go about getting repairs made by the landlord?**

If a tenant believes that his or her rental unit needs repairs, and that the repairs are the landlord's responsibility, the tenant should notify the landlord. Since a rental unit is a business investment, most landlords want to keep it safe, clean, and attractive. It's best for the tenant to notify the landlord of damage or defects by both a telephone call and a letter. The tenant should date the letter and keep a copy for his or her records. The notice should be sent to the landlord, manager or agent by certified mail (return receipt requested). Alternatively, the tenant (or a friend) may personally deliver the notice to the landlord, manager or agent and get a receipt showing that the notice was received. The tenant should keep the receipt and a copy of the notice. The copy and the receipt will be proof that the tenant notified the landlord, and also proof of what the notice said.

If the landlord doesn't make the requested repairs, and doesn't have a reasonable justification for not doing so, the tenant may have one of several remedies, depending on the seriousness of the repairs. Each of the remedies has its own requirements and risks, so the tenant should use them carefully.

### **The "repair and deduct" remedy.**

The "repair and deduct" remedy allows tenants to deduct money from their rent to pay for repair of conditions that are covered by the implied warranty of habitability.<sup>14</sup> These include habitability defects that are related to health or safety (such as a leak in the roof during the rainy season, no hot running water, a gas leak, or a defective sewer system), that are serious, but that would not cost more than one month's rent to repair.

As a practical matter, the repair and deduct remedy allows a tenant to make needed repairs of serious conditions without filing a lawsuit against the landlord. Because this remedy involves legal technicalities, the tenant may want to talk to a lawyer or legal aid society before using it. The basic requirements and steps for using the repair and deduct remedy are:

1. The defects must be serious and must relate to basic habitability (fitness for living).
2. Tenants can only use the repair and deduct remedy twice in any twelve-month period. The repairs cannot cost more than one month's rent.
3. The tenant or the tenant's family, guests or pets must not have caused the damages that require repair.
- If the tenant or people for whom the tenant is responsible caused the defects, the tenant cannot use this remedy.
4. The tenant must inform the landlord, either orally or in writing, of the needed repairs.
- It's best that this notice be in writing. The notice should describe the problem and the required repairs in sufficient detail. The tenant should date the letter and keep a copy for his or her records. The notice should be sent to the landlord, manager or agent by certified mail (return receipt requested). Alternatively, the tenant (or a friend) may personally deliver the notice to the landlord, manager or agent and get a receipt showing that the notice was received. The copy and the receipt will be proof that the tenant notified the landlord, and also proof of what the notice said.
5. The tenant must give the landlord a reasonable period of time to make the needed repairs.
- What is reasonable depends on the defects and the type of repairs that are needed. The law usually considers 30 days to be reasonable, but a shorter period may be considered reasonable, depending on the circumstances. For example, if the heater is broken and it is very cold outdoors, two days may be considered reasonable (assuming that a heating contractor or other person capable of making

adequate repairs is available within that time period).

6. If the landlord doesn't make the needed repairs within a reasonable period of time, the tenant may either make the repairs, or hire someone to do them, and then deduct the cost from the rent when it is due. The tenant should be sure to keep all receipts for the repairs.

**Risks:** The defects may not be bad enough to make the rental unit legally uninhabitable. In that event, the landlord can sue the tenant to recover the money deducted from the rent, or attempt to evict the tenant for nonpayment of rent. If the tenant deducted money for repairs not covered by the remedy, or didn't give the landlord proper notice or a reasonable time to make repairs, a court may order the tenant to pay the full rent even though the tenant paid for the repairs.

The landlord may try to evict the tenant or raise the rent to punish the tenant for using the repair and deduct remedy. This action is known as a "retaliatory eviction." The law prohibits this type of eviction, with some limitations.<sup>15</sup>

### **The "abandonment" remedy.**

The law allows a tenant to abandon (leave) a rental unit that is uninhabitable (that is, the unit has such serious problems or defects that the tenant's health and safety will be affected).<sup>16</sup> This remedy is basically an alternative to the repair and deduct remedy, and has most of the same basic steps. If the repairs which are needed are so serious that they would cost more than one month's rent, the tenant might choose to leave the rental unit rather than using the repair and deduct remedy. If a tenant uses this remedy properly, then once the tenant has abandoned the rental unit, he or she is not responsible for paying further rent.<sup>17</sup> However, as with the repair and deduct remedy, the tenant can use the abandonment remedy only if the landlord has violated the implied warranty of habitability.

The basic requirements and steps for abandoning a rental unit are:

1. The defects must be serious and must relate to basic habitability (fitness for living).
2. The tenant or the tenant's family, guests or pets must not have caused the defects that require repair.
- If the tenant or people for whom the tenant is responsible caused the defects, the tenant cannot use this remedy.
3. The tenant must inform the landlord either orally or in writing of the needed repairs.
- It's best that this notice be in writing. The notice should

describe the problem and the required repairs in sufficient detail. The written notice should be dated and the tenant should keep a copy. The notice should be sent to the landlord, manager or agent by certified mail (return receipt requested). Alternatively, the tenant (or a friend) may personally deliver the notice to the landlord, manager or agent and get a receipt showing that the notice was received. The tenant should keep the receipt and a copy of the notice. The copy and the receipt will be proof that the tenant notified the landlord, and also proof of what the notice said.

4. The tenant must give the landlord a reasonable period of time to make the needed repairs.

- What is reasonable depends on the defects and the type of repairs that are needed. The law usually considers 30 days to be reasonable, but if the problem makes the rental unit unfit for living, a shorter period may be considered reasonable.

5. If the landlord doesn't make the needed repairs within a reasonable period of time, the tenant should notify the landlord in writing of the tenant's reasons for moving and then actually move out, returning to the landlord all keys which the tenant has. The notice should be mailed or delivered as explained under 3 above. The tenant should keep a copy of the notice.

- While the law does not require the tenant to notify the landlord in writing of the tenant's reasons for moving, it is a good idea to do so. The tenant's letter may discourage the landlord from suing the tenant to collect additional rent or other damages. A letter also documents the tenant's reasons for moving in the event of a later lawsuit, so the tenant should be sure to keep a copy. If possible, the tenant should take pictures or have local health or building officials inspect the rental before moving.

**Risks:** The defects may not be bad enough to make the rental unit legally uninhabitable. The landlord may sue the tenant to collect additional rent or damages.

### **The "rent withholding" remedy.**

Tenants have another option for getting repairs made -- the "rent withholding" remedy. By law, a tenant is allowed to withhold (stop paying) some or all of the rent if the landlord does not fix serious conditions that are covered by the implied warranty of habitability.<sup>18</sup>

In order for the tenant to withhold rent, the defects or needed repairs must be more serious than would justify use of the repair and deduct remedy. The conditions serious

enough to justify withholding rent which were outlined in a California Supreme Court case, Green v. Superior Court,<sup>19</sup> are listed below as examples:

- Collapse and nonrepair of the bathroom ceiling.
- Continued presence of rats, mice and cockroaches.
- Lack of any heat in four of the apartment's rooms.
- Plumbing blockages.
- Exposed and faulty wiring.
- An illegally installed and dangerous stove.

In the Green case, **all** of these conditions were present, and there also were many violations of the local housing and building codes.

In order to prove a violation of the implied warranty of habitability, the tenant will need evidence of the needed repairs. Therefore, if the tenant goes to court, photographs, witnesses, and copies of letters informing the landlord of the problem would be very helpful.

Before the tenant stops paying rent, it is a good idea to check with a legal aid society, lawyer, or tenant organization to help determine if this is the appropriate remedy. The basic requirements and steps for using the rent withholding remedy are:

1. The needed repairs or defects must seriously affect the tenant's health and safety.
- The conditions must be serious enough to make the rental uninhabitable, as in the Green case above.
2. The tenant, or the tenant's family, guests or pets must not have caused the defects or needed repairs.
- If the tenant or people for whom tenant is responsible caused the defects, the tenant cannot use this remedy.
3. The tenant must inform the landlord either orally or in writing of the needed repairs.
- It's best that this notice be in writing. The notice should describe the problem and the required repairs in sufficient detail. The written notice should be dated, and the tenant should keep a copy. The notice should be sent to the landlord, manager or agent by certified mail (return receipt requested). Alternatively, the tenant (or a friend) may personally deliver the notice to the landlord, manager or agent and get a receipt showing that the notice was received. The tenant should keep the receipt and a copy of the notice. The copy and the receipt will be proof that the tenant notified the landlord, and also proof of what the notice said.

4. The tenant must give the landlord a reasonable period of time to make the needed repairs.

- What is reasonable depends on the defects and the type of repairs that are needed.

5. If the landlord doesn't make the needed repairs within a reasonable period, the tenant can withhold the rent. The tenant can continue to withhold the rent until the landlord makes the repairs.

6. The tenant should save the withheld rent money. Do not spend it. The tenant probably will have to pay the landlord some or all of the rent once the repairs are made.

In addition, if the tenant withholds rent, the tenant should put the rent money into a special bank account (called an escrow account). The tenant should notify the landlord in writing that the rent money has been deposited in the escrow account, and explain why the tenant has done this. Depositing the withheld rent money in an escrow account is not required by law, but is a very good thing to do for three reasons.

First, depositing the money in an escrow account will assure that the tenant will have the money to pay reasonable rent once the repairs are made. Rent withholding cases often wind up in court, as explained under "Risks" below. Usually, the judge will require the tenant to pay the landlord some reduced rent based on the value of the rental unit, taking into consideration the repairs needed for the time that the rent was withheld. Rarely does a judge excuse payment of all rent.

Second, putting the rent money in an escrow account proves to the court that the tenant didn't withhold the rent just to avoid paying the rent. If there is a court hearing, the tenant should bring rental receipts or other evidence to show that he or she has been reliable in paying rent in the past.

Third, most legal aid societies and lawyers will not represent a tenant who has not deposited the withheld rent money in an escrow account.

Hopefully, the tenant and the landlord will be able to agree on the amount of rent owed for the time when the rental unit needed repairs. If the tenant and the landlord can't agree on a reasonable amount, the tenant may need to go to court or use an arbitration or mediation service.

**Risks:** The defects may not be bad enough to make the rental unit legally uninhabitable. When the tenant withholds rent, the landlord may give the tenant an eviction notice (a three-day notice to pay the rent or leave). If the tenant refuses to pay, the landlord will probably sue to evict the tenant. Then the tenant will have to prove to the court that the landlord violated the

implied warranty of habitability. If the tenant wins the case, the landlord will be ordered to make the repairs, and the tenant will be ordered to pay a reasonable rent, which must be paid within a few days. If the tenant wins but doesn't pay the amount of rent ordered when it is due, the judge will enter a judgment for the landlord and the tenant probably will be evicted. If the tenant loses, he or she will have to pay the rent and probably will be evicted.

Another risk of using this method is that if the tenant does not have a lease, the landlord may try to ignore the tenant's request for repairs and remove or punish the tenant by giving him or her a 30-day notice to move. This type of eviction is known as a "retaliatory eviction." The law prohibits this type of eviction, with some limitations.<sup>20</sup>

### **Lawsuit for damages as a remedy.**

The remedies of repair and deduct, leaving an uninhabitable rental, and rent withholding allow the tenant to take action against the landlord without filing a lawsuit.

However, the tenant may file a lawsuit if the landlord doesn't make needed repairs in a timely manner.<sup>21</sup> If the tenant prevails in this lawsuit, the court may award the tenant actual damages and "special damages" of not less than \$100 and not more than \$1,000. Special damages are costs incurred, such as the rental of a motel room because the landlord failed to repair an uninhabitable unit. Furthermore, the court could order the landlord to abate a nuisance and to repair any substandard condition which significantly affects the health and safety of the tenants.<sup>22</sup> This could result, for example, in a court ordering a landlord to fix a leaky roof, with the court retaining jurisdiction until the roof is fixed.

In order to prevail in such a lawsuit, all of the following criteria must be met:<sup>23</sup>

- The unit must be uninhabitable.
- After inspection of the premises, a housing inspector has notified the landlord or agent, in writing, of the obligation to repair the substandard conditions.
- The substandard conditions have existed and have not been repaired by the landlord beyond 60 days after the issuance of the written notice by the housing inspector.
- The substandard conditions were not caused by the tenant or the tenant's family, guests or pets.

Some rental agreements contain provisions that award attorney's fees to the landlord if the landlord files a lawsuit against a tenant and wins. Even if the agreement doesn't say it, those same provisions also apply if the tenant sues the landlord and wins. This means that the

landlord could be required to reimburse the tenant for all or at least some of the cost of hiring a lawyer, or vice versa.<sup>24</sup>

The tenant can sue in small claims, municipal or superior court, depending on the amount of the suit. Before filing a lawsuit the tenant should take these basic steps:

- Notify the landlord in writing about the repairs required. The notice should be sent by certified mail (return receipt requested). Alternatively, the tenant (or a friend) may personally deliver the notice to the landlord or agent and get a receipt showing that the notice was received. The tenant should keep a copy of the notice and the receipt.
- The notice should be specific about the problem and the required repairs.
- The notice should give the landlord a reasonable time to make the repairs.
- The tenant should contact the local city or county building department, health department, or local housing agency to request an inspection.
- The tenant should gather evidence of the uninhabitable condition (for example, photographs, statements of witnesses, inspection reports), so that the tenant can prove his or her case.
- The tenant should discuss the case with a lawyer, legal aid society or small claims court advisor.
- The tenant must understand what the lawsuit is likely to accomplish, and also the risks involved.

#### **Resolving complaints out of court.**

Before filing suit, the tenant should consider having the complaint resolved out of court, through a dispute resolution program. If the tenant and the landlord agree, a neutral third party will work with both of them to reach a solution. Dispute resolution is easy, and can be inexpensive and fast. For help locating a nearby dispute resolution program, call the Department of Consumer Affairs' Consumer Information Center at (800) 952-5210.

**NOTICE:** We strive to make our Legal Guides accurate as of the date of publication, but they are only guidelines and not definitive statements of the law. Questions about the law's application to particular cases should be directed to a specialist.

Prepared by:

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(Revised, October 1994; editorial revisions, June 1996.)

1. Civil Code section 1941.
2. Civil Code section 1941.2(a)(4).
3. Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704]; Hinson v. Delis (1972) 26 Cal.App.3d 62 [102 Cal.Rptr. 661].
4. Civil Code sections 1929, 1941.2.
5. Civil Code section 1941.
6. Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].
7. Civil Code section 1941.1.
8. Health and Safety Code sections 17900-17995.
9. Civil Code sections 1929, 1941.2.
10. Civil Code section 1941.2(a).
11. Civil Code section 1941.2(b).
12. Civil Code sections 1929, 1942(c); see Brown and Warner, *Landlord's Law Book*, Vol. I: Rights & Responsibilities, p. 11/7 (NOLO Press 1993).
13. Civil Code section 1942.1
14. Civil Code section 1942.
15. Civil Code section 1942.5(a).
16. Groh v. Kover's Bull Pen Inc. (1963) 221 Cal.App.2d 611 [34 Cal.Rptr. 637].
17. Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].
18. Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].
19. Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].
20. Civil Code section 1942.5(a).
21. Civil Code section 1942.4.
22. Civil Code section 1942(c).
23. Civil Code section 1942.4(a).
24. Civil Code section 1717.

